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No. 05-1256

IN THE

Supreme Court of the United States

PHILIP MORRIS USA,
Petitioner,

v.

MAYOLA WILLIAMS,
Respondent.

On Writ of Certiorari to the Supreme Court of Oregon

BRIEF OF THE WASHINGTON LEGAL FOUNDATION AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

DANIEL J. POPEO
PAUL D. KAMENAR
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Avenue, NW
Washington, D.C. 20036
(202) 588-0302

ARVIN MASKIN *
KONRAD L. CAILTEUX
DAVID R. SINGH
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, N.Y. 10153
(212) 310-8000

* Counsel of Record

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QUESTIONS PRESENTED

1. Whether due process permits a jury to punish a defendant for the effects of its conduct on non-parties.

2. Whether, in reviewing a jury's award of punitive damages, an appellate court's conclusion that a defendant's conduct was highly reprehensible and analogous to a crime can "override" the constitutional requirement that punitive damages be reasonably related to the plaintiff's harm.[1]

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[1] In their brief, *amici curiae* will focus primarily on the first question.

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INTEREST OF *AMICI CURIAE*

The Washington Legal Foundation ("WLF") is a non-profit public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF regularly appears before federal and state courts promoting economic liberty, free enterprise principles, and a limited and accountable government. WLF's Legal Studies Division also publishes monographs and other publications on these topics.[1]

In particular, WLF has devoted substantial resources over the years through litigation and publishing to promote civil justice reform, including tort reform and opposing excessive punitive damages and attorneys' fee awards. WLF appeared as *amicus curiae* in *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408 (2003); *Cooper Indus., Inc.* v. *Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *BMW of N. America, Inc.* v. *Gore*, 517 U.S. 559 (1996); *Honda Motor Co., Ltd.* v. *Oberg*, 512 U.S. 415 (1994); *TXO Prod. Corp.* v. *Alliance Resources Corp.*, 509 U.S. 443 (1993); and *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U.S. 1 (1991).

In addition, WLF has published numerous articles regarding punitive damages. *See, e.g.*, Christine J. Imre, *A Punitive Damages Primer: Post-State Farm Strategies*, (Washington Legal Foundation 2004); Arvin Maskin, et al., *A Punitive Damages Primer: Legal Principles and Constitutional Challenges*, (Washington Legal Foundation

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[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, made a monetary contribution to the preparation and submission of this brief.

1994); Victor E. Schwartz, et al., *Multiple Imposition of Punitive Damages: The Case For Reform*, (Washington Legal Foundation Working Paper No. 50, 1992); Stephen M. Turner, et al., *Punitive Damages Explosion: Fact or Fiction?* (Washington Legal Foundation Working Paper No. 50, 1992); Victor E. Schwartz, *Punitive Damages: Should the Constitution of the United States Provide Boundaries* (Washington Legal Foundation Legal Backgrounder, 1989); Theodore B. Olson and Theodore J. Boutrous, *The Constitutionality of Punitive Damages* (Washington Legal Foundation Legal Backgrounder 1989). Excessive and unpredictable punitive damages are ultimately harmful to the economy, workers and consumers.

The Allied Educational Foundation (AEF) is a non-profit charitable and educational foundation based in New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of law, including law and public policy. AEF has appeared as *amicus curiae* before the U.S. Supreme Court in numerous cases as co-amicus with WLF that are relevant to this case, including *State Farm Mut. Auto. Ins. Co.* v. *Campbell, BMW of N. Am. Inc.* v. *Gore,* and *Pacific Mut. Life Ins. Co.* v. *Haslip.*

WLF and AEF believe that they can bring a broader perspective on the issues presented in this case which will assist the Court in deciding this case in such a way as to give clearer guidance to courts on the imposition of punitive damages awards.

By letters filed with the Clerk of the Court, the parties have consented to the filing of this brief.

STATEMENT OF THE CASE

Amici curiae are, in the interest of brevity, omitting any detailed statement of the facts of this case. *Amici* adopt by reference the statement of facts set forth in Petitioner's Brief.

In short, Jesse Williams was a lifelong smoker of Marlboro cigarettes, a brand of cigarettes manufactured by Philip Morris. Throughout his life, Williams was repeatedly warned—by his parents and wife, among others—of the dangers associated with smoking cigarettes. Still, he continued smoking for over 45 years and was diagnosed with lung cancer in 1996. Williams died one year later, and his widow ("plaintiff") sued Philip Morris. *Williams* v. *Philip Morris Inc.*, 127 P.3d 1165, 1168 (Or. 2006).

In her complaint, plaintiff alleged that Philip Morris was negligent because it (1) sold cigarettes that it knew or should have known were addictive and caused causer; (2) manipulated the contents of cigarettes in order to maintain and enhance their addictive effects; (3) failed to test cigarettes in ways likely to link smoking with human disease and; (4) failed to manufacture a safer cigarette. Plaintiff also alleged that Philip Morris engaged in fraud by denying that a link between smoking and cancer had been scientifically established. *Id.*

During closing arguments at trial, plaintiff's counsel repeatedly encouraged the jury to punish Phillip Morris not only for harm allegedly to Williams, but also to masses of other, unidentified people:

> In Oregon, how many people do we see outside, driving home, coming to work, over

> the lunch hour smoking cigarettes? For every hundred, cigarettes that they smoke are going to kill ten through lung cancer. * * *
>
> When you determine the amount of money to award in punitive damages against Philip Morris . . . [i]t's fair to think about how many other Jesse Williams[es] in the last 40 years in the State of Oregon there have been. It's more than fair to think about how many more are out there in the future. * * *

Pet. Cert. at 2. Philip Morris thus sought the following instruction in an attempt to protect against an unconstitutional punitive damages award:

> The size of any punishment should bear a reasonable relationship to the harm caused to Jesse Williams by the defendant's punishable conduct. Although you may consider the extent of the harm suffered by others in determining what that reasonable relationship is, you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own and award punitive damages for those harms, as those other juries see fit.

Williams, 127 P.3d at 1175. The trial court rejected this proposed jury instruction and instead told the jury that it was free to award punitive damages up to $100 million, the amount of punitive damages that plaintiff requested in her complaint. The instruction omitted any mention of the source of, or rationale for, this immense figure. *Id.*

The jury found for the plaintiff on fraud and negligence and awarded punitive damages only for the fraud count of $79.5 million (over 95 times the compensatory damages verdict of $821,485).[2] The trial court later held that the punitive damages award was excessive under federal standards and reduced the punitive damages award to $32 million, still 39 times the compensatory damages verdict. *Id.* at 1171.

Philip Morris appealed to the Oregon Court of Appeals, which rejected Philip Morris' argument that the trial court should have given an instruction regarding harm to non-parties, and reinstated the jury's $79.5 million punitive damages award. Philip Morris sought review in this Court, arguing that the Court of Appeals decision was inconsistent with *State Farm Mut.l Auto. Ins. Co.* v. *Campbell*, 538 U.S. 48 (2003) in numerous respects, including that the United States Constitution required the trial court to instruct the jury that any punitive damages award must bear a reasonable relationship to the harm caused to Williams himself, as

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[2] Notably, the jury found that Jesse Williams was 50 percent contributorily negligent for the damages that he sustained, the same damages he sustained as a result of the fraud or misrepresentation count. 127 P.3d at 1171 ("As to the negligence claim, the jury found Williams 50% responsible for the damages."). While the amount of the compensatory damages awarded was not reduced by 50 percent, due to the finding of liability on the fraud count, as it otherwise would be under Oregon's comparative negligence law, O.R.S. § 31.600, *amici* submit that the finding by the jury that Williams was responsible for 50 percent of the damages he suffered nevertheless further demonstrates the excessiveness of the punitive damages award in this case.

opposed to non-parties, such as past, present, and future Oregon consumers. This Court remanded the case to the Oregon Court of Appeals so that it could reconsider whether the restoration of the $79.5 million punitive damages award was proper in light of *State Farm*. *Philip Morris U.S.A., Inc.* v. *Williams*, 540 U.S. 801 (2003).

On remand, the Oregon Court of Appeals rebuffed Philip Morris' claims of instructional error, holding that it was consistent with *State Farm* for the jury to punish Philip Morris for harm to non-parties. Accordingly, the Court of Appeals reinstated the jury's $79.5 million damages award, and Philip Morris appealed yet again to the Oregon Supreme Court. *Williams* v. *Philip Morris, Inc.*, 92 P.3d 236 (Or.App. 2004).

The Oregon Supreme Court affirmed, ruling that the $79.5 million punitive damages award comports with due process because, in its view, *State Farm* does not prohibit courts from punishing a defendant for similar wrongdoing to non-parties, although plaintiff presented no evidence that any other non-party, much less masses of Oregonians, relied on fraudulent statements by Philip Morris in deciding to continue smoking. *Williams*, 127 P.3d at 1175. Moreover, the Oregon Supreme Court ruled that Philip Morris' wrongdoing was "extraordinarily" reprehensible, *i.e.*, it fell within the definition of criminal conduct, and that the *State Farm* and *Gore* limitations on the ratio between punitive and compensatory damages thus did not apply. *Id.* at 1179.

SUMMARY OF ARGUMENT

This Court's jurisprudence regarding punitive damages has implicitly recognized that defendants have a constitutional right to procedural due process that is separate and independent from any substantive due process right they may possess. In order to protect Philip Morris' constitutional right to procedural due process, the trial court should have instructed the jury on the constitutional constraints on punitive damages this Court recognized in *BMW of N. America, Inc.* v. *Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408 (2003), including the Court's directive that punitive damages award must bear a reasonable relationship to the actual injuries a plaintiff suffered and that it must not punish a defendant for harm to non-parties. Instead, the trial court refused to give this instruction or anything comparable and instructed the jury that it was free to award any amount of punitive damages up to $100 million, the amount sought in plaintiff's complaint. Indeed, the jury was impermissibly allowed to base its award on speculative damages to non-parties, namely Oregonians who smoke regardless of their reason for doing so, effectively converting the case into a class action without the procedural safeguards required for such actions.

With no meaningful guidance, nearly unconstrained discretion, and few procedural safeguards to assure the similarity of harm afflicted upon non-parties, the jury found for the plaintiff on her fraud claim and awarded $79.5 million in punitive damages. The trial court recognized that this award was inconsistent with federal law and it reduced the punitive damages award to $32 million, still 39 times the compensatory damages. The Oregon Court of Appeals,

however, reinstated the $79 million punitive damages award. To protect the constitutional rights of Philip Morris and other defendants at risk of being punished by runaway juries, the Court should vacate the judgment, order a new trial, and direct the trial court to give the jury meaningful instructions on how to apply the limits to punitive damages set forth in *Gore* and *State Farm*.

ARGUMENT

I. DEFENDANT'S RIGHT TO PROCEDURAL DUE PROCESS WAS VIOLATED IN THIS CASE BECAUSE THE JURY WAS NOT PROPERLY INSTRUCTED ON WHAT IT MAY CONSIDER WHEN ASSESSING A PUNITIVE DAMAGES AWARD

A. Philip Morris Has An Independent Right To Procedural Due Process

In assessing punitive damages, defendants have a constitutional right to procedural due process that is separate from any substantive due process rights. Here, Philip Morris' procedural due process rights were violated when the trial court refused to instruct the jury about constitutionally impermissible considerations in determining the amount of punitive damages post-*State Farm*.

In *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U.S. 1 (1991), this Court upheld the constitutionality of jury instructions that provided the jury with little guidance due to the existence of a comprehensive post-verdict check on the jury's discretion. In *Haslip*, the Alabama trial court's instructions told the jury little more than that the purpose of punitive damages was to punish the defendant and to deter

the defendant and others from engaging in such conduct in the future. *Id.* at 19. The instructions thus left the jury with "significant discretion in its determination of punitive damages." *Id.* Nevertheless, this Court upheld the constitutionality of these instructions because of Alabama's procedures for post-verdict review of punitive damages awards. *Id.* at 20-24.

Since *Haslip*, however, this Court has subsequently determined that the constitutionality of a punitive damages award is not merely a question of the size of the award, as is considered in a substantive due process analysis, but is also a question of whether the jury factored illegitimate, unconstitutional considerations into its determination. Indeed, Justice Kennedy recognized this in *TXO Prod. Corp.* v. *Alliance Res. Corp.*, explaining that "[w]hen a punitive damages award reflects bias, passion, or prejudice on the part of the jury, rather than a rational concern for deterrence and retribution, the Constitution has been violated, no matter what the absolute or relative size of the award." 509 U.S. 443, 467 (1993) (Kennedy, J., concurring in part and concurring in judgment).

More recently, a majority of this Court also implicitly recognized that a defendant has an independent constitutional right to have a jury instructed regarding limitations on its use of evidence admitted in the case. In *State Farm*, this Court mandated that "[a] jury *must* be instructed . . . that it may not use out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred." 538 U.S. at 422 (emphasis added). Such an instruction would not be required by the Constitution if post-verdict review could always provide a sufficient constraint on a jury's discretion. Indeed, it has

long been established that, if a jury does in fact base its determination on improper considerations, post-verdict remittitur cannot cure such constitutional infirmity. *See Minneapolis, St. P. & S.S.M. Ry.* v. *Moquin*, 283 U.S. 520, 521 (1931) (holding, in a different context, that remittitur cannot cure a verdict that was the result of a jury's "passion and prejudice").

Although decided before *State Farm*, the Ninth Circuit reached a similar conclusion in *White* v. *Ford Motor Co.*, 312 F.3d 998 (9th Cir. 2002), holding that post-verdict review of the size of a damages award cannot cure a verdict that was based on improper considerations. In *White*, the appellate court ordered a new trial on punitive damages because the trial court refused to instruct the jury that it may not punish the defendant for its out-of-state actions. *Id.* at 1019-20. In its decision, the court noted that "[a] punitive damages award that encompasses a defendant's extraterritorial conduct may be unconstitutional even if the size of the award itself, as compared to compensatory damages, is not outside the bounds of due process." *Id.* at 1016.

Because the jury might have considered inappropriate factors in reaching its decision, the Ninth Circuit sent the case back to the jury with orders that the jury receive more specific instructions from the trial court on what it was allowed to consider in reaching a punitive damages award. *Id.* at 1020. Like this Court, the Ninth Circuit understood that the only way to fully ensure defendants' procedural due process rights is to protect them in the first instance by properly instructing a jury.

B. Philip Morris' Right To Procedural Due Process Was Violated Because The Trial Court Failed To Instruct The Jury Regarding The Factors That Could And Could Not Be Considered Under *State Farm*

Since *Haslip* was decided 15 years ago, the Court has recognized significant constitutional restraints on the award of punitive damages beyond just the amount. These limitations include restrictions on the types of evidence and arguments that can provide a predicate for punitive damages. *See, e.g., Gore*, 517 U.S. at 573-74 (juries should not be allowed to consider either a defendant's lawful out-of-state conduct or overall wealth in determining the amount of punitive damages to award a plaintiff); *State Farm*, 538 U.S. at 423 (juries are not allowed to punish a defendant for harm to non-parties because "[p]unishment on these bases creates the possibility of multiple punitive damages awards for the same conduct; for in the usual case nonparties are not bound by the judgment some other plaintiff obtains").

Logic dictates that the failure to instruct the jury regarding these constitutional constraints, and in particular the *State Farm* rule that juries should not adjudicate and punish for the claims of non-parties, violated Philip Morris' right to procedural due process. Indeed, it would be wholly inconsistent for the Court to recognize such constitutional constraints, on the one hand, but not require juries to even be informed of the constraints, on the other. As such, this Court should find that procedural due process entitled Philip Morris to a jury instruction on the *State Farm* rule that punitive damages must be reasonably related to plaintiff's

actual compensatory damages and not harm afflicted on non-parties.

In fact, this Court has previously mandated that a jury be given instructions regarding the proper use of evidence in determining punitive damages. This Court ruled in *State Farm* that a jury must be instructed that it "may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred." *Id.* at 422. Post-*State Farm*, there is simply no rational reason for this Court to require lower courts to instruct juries on one limit on their power to punish (*i.e.*, that they may not punish for harms incurred outside the forum state), but not require instructions regarding a logically indistinguishable limit (*i.e.*, that they may not punish for harm to non-parties and instead must apportion the punitive award relative to the size of plaintiff's compensatory damages); it would be wholly inconsistent to hold otherwise.

Moreover, permitting the jury to punish Philip Morris for supposedly similar harm to non-parties is analogous to allowing classwide punishment with none of the procedural safeguards provided for such actions. *See* Fed. R. Civ. P. 23. In the class action context, this Court has recognized the importance of requiring the class representative to prove the typicality of their claim and the predominance of common questions of law and fact. *See, e.g., Amchem Prod. Inc.* v. *Windsor*, 521 U.S. 591, 623-25 (1997). These safeguards are in place in part to ensure that the efficiency of the class action procedure does not come at the expense of providing a defendant a fair opportunity to defend itself against claims of liability.

The Oregon Supreme Court's holding that juries may consider harm to non-parties implicates the same due process concerns at issue in the class action context. A rule allowing juries to punish a defendant for harm and future harm to non-parties, as suggested by the Oregon Supreme Court, would essentially allow a plaintiff to obtain class relief without having to make any evidentiary showing that common questions of law and fact predominate, or why individual defenses peculiar to certain non-parties do not predominate. Here, the jury may have impermissibly punished Philip Morris for harm to non-parties without plaintiff having to prove that any of the non-parties heard and relied on false statements by Philip Morris in deciding to smoke. What makes this process even more unfair to Philip Morris is that the jury's determination would have no *res judicata* effect on non-parties, who would remain free to bring claims against Philip Morris in the future, and to seek even punitive damages for the same conduct.

C. There Is No Legitimate, Constitutional Basis For Not Instructing The Jury Regarding The *State Farm* Restriction That Punitive Damages Should Not Be Based On Harm To Non-Parties

While this Court has held that a jury can consider the scope of the harm created by the defendant's overall conduct (including harm to non-parties) in evaluating the reprehensibility of the specific acts that harmed the plaintiff in a particular case, *see, e.g.*, *Gore*, 517 U.S. 559, 574 n.21 (1996), the Court has also held that a jury may not punish a defendant for harm it allegedly caused a non-party. *See, e.g.*, *State Farm*, 538 U.S. at 423 ("[d]ue process does not permit courts, in the calculation of punitive damages, to adjudicate

the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis . . . ."). A contrary rule would risk cumulative punishments for the same conduct and run afoul of the Constitution. *Id.* (cautioning that punishing a defendant for harm caused to a nonparty "creates the possibility of multiple punitive damages awards for the same conduct, for nonparties are not normally bound by another plaintiff's judgment").

Without an instruction that any punitive damages award must bear a reasonable relationship to this particular plaintiff's compensatory damages (*e.g.*, this plaintiff suffered because of Philip Morris' alleged actions against her), the jury in this case may not have appreciated the subtle, yet significant, distinction between considering harm to non-parties to gauge the reprehensibility of Philip Morris' conduct toward plaintiff, and punishing Philip Morris for alleged wrongdoing afflicted on nonparties. In such situations, where there is a danger that evidence admissible for one purpose may be considered by the jury for an illegitimate, unconstitutional purpose, courts have required limiting instructions to be given to juries. *See, e.g.*, Thomas B. Colby, *Beyond the Multiple Punishment Problem: Punitive Damages as Punishment for Individual, Private Wrongs*, 87 Minn. L. Rev. 583, 676 (2003) ("it is a familiar principle that, when evidence is admitted for one purpose, but would violate the Constitution for the jury to consider it for a different purpose, the court should instruct the jury not to consider the evidence for the impermissible purpose").

Indeed, this Court has often required limiting instructions where it would violate the Constitution if evidence considered for an admissible purpose was considered for an improper purpose. *See, e.g., Tennessee* v.

Street, 471 U.S. 409, 414-15 (1985) (holding that the Confrontation Clause is not violated by the introduction of the confession of an accomplice for the nonhearsay purpose of rebutting the defendant's testimony that his own confession was coercively derived from the accomplice's statement, but only if the jury is instructed not to consider the confession for the truth of the matter asserted); *Marshall* v. *Lonberger*, 459 U.S. 422, 438 n.6 (1983) ("Introduction of the defendant's prior conviction did not pose a sufficient danger of unfairness to the defendant . . . in part because such evidence was accompanied by instructions limiting the jury's use of the conviction to sentence enhancement"); *Harris* v. *New York*, 401 U.S. 222, 224 (1971) (holding that the state may introduce statements elicited from a defendant in violation of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), for the purpose of impeachment, so long as the jury is instructed that such evidence may not be considered for the purpose of determining guilt).

Although *Tennessee*, *Marshall*, and *Harris* all involved criminal defendants, the need for a limiting instruction in the civil punitive damages context is no less compelling. *See State Farm*, 538 U.S. at 417 (noting that although punitive damages in civil cases are intended to serve the same purpose as criminal penalties, "defendants subjected to punitive damages in civil cases have not been accorded the protections applicable in a criminal proceeding"). Philip Morris' proposed instruction that any punitive damages award must bear a reasonable relationship to plaintiff's compensatory damages in this case and not punish Philip Morris for harm to non-parties is analogous to the limiting instructions that this Court has required in other contexts. Accordingly, it should have been given to the jury, particularly in light of plaintiff's counsel's urging of the jury

to consider speculative damages to thousands of other current and future smokers in the State of Oregon, regardless of their reason for smoking.

D. The Trial Court Violated Philip Morris' Right To Procedural Due Process In Instructing The Jury That It Was Free To Award Damages Up To $100 Million

Although the Court in both *Gore* and *State Farm* declined to recognize any "rigid benchmark" that a punitive damages award may not surpass, *Gore*, 517 U.S. at 581 and *State Farm*, 538 U.S. at 425, in *State Farm* the Court unambiguously admonished that, in practice, "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *State Farm*, 538 U.S. at 424-25. Here, the court instructed the jury that it was free to award punitive damages up to $100 million without even knowing the amount of compensatory damages the jury would award. Logically, it was inconsistent with procedural due process for the trial court to have instructed the jury that it could impose a particular punitive damages award without any knowledge of what the compensatory damages award would be.

Furthermore, Philip Morris was prejudiced by the suggestion of a $100 million dollar limit on punitive damage because this gave the jury a reference point which likely significantly influenced the punitive damages award. Numerous scientific studies regarding dollar suggestions for damages have confirmed what cognitive researchers have labeled an "anchoring effect." These studies have established a linear relationship between the dollar

suggestions and subsequent awards. Put simply, a larger request yields a greater award. *See* Don Rushing, et al., *Anchors Away: Attacking Dollar Suggestions for Non-Economic Damages in Closings*, (Defense Counsel Journal, July 2003); John Malouff & Nicola A. Schutte, *Shaping Juror Attitudes: Effects of Requesting Different Damage Amounts in Personal Injury Trials*, 129 J. Soc. Psychol. 491 (1989); Gretchen B. Chapman & Brian Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts*, 10 Applied Cognitive Psychol. 519 (1996). One study even found that nearly half of mock jurors selected a damages award that *exactly* matched the amount requested, demonstrating the power of the anchoring effect. A. Raitz & E. Greene, *Determining Damages: The Influence of Expert Testimony on Jurors' Decision Making*, 14 Law and Human Behavior 385 (1990).

Making matters worse, the trial court further compromised Philip Morris' right to procedural due process by not informing the jury about the source of the $100 million figure: plaintiff's own complaint. Had the jury been so informed, it may have at least inferred that the number was just a self-serving demand and given less weight to the figure. Thus, not only did the trial court instruct the jury that it could award a punitive damages award that may well be in excess of constitutional limits, given the amount of compensatory damages awarded in this case, but it compounded its errors by failing to inform the jury of the source of the figure. Thus, the figure may have seemed to carry the imprimatur of the trial court, compounding the anchoring effect in this case.

CONCLUSION

For the foregoing reasons, and those presented by the Petitioner, the judgment below should be reversed.

Respectfully submitted,

Daniel J. Popeo
Paul D. Kamenar
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 588-0302

Arvin Maskin*
Konrad L. Cailteux
David R. Singh
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, N.Y. 10153
(212) 310-8000

*Counsel of Record

Dated: July 28, 2006